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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,308	08/16/2001	Alexander E. Mericas	AUS920010547US1	3191

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EXAMINER

WEST, JEFFREY R

ART UNIT PAPER NUMBER

2857

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/931,308	MERICAS, ALEXANDER E.	
	Examiner	Art Unit	
	Jeffrey R. West	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-14,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8,9,11-14,16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 8, 9, 11-14, 16 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,557,548 to Gover et al. in view of U.S. Patent Application Publication No. 2002/0026524 to Dharap.

Gover discloses a method for monitoring the occurrences of one or more events related to the operation of a processor (column 2, lines 1-3), the processor including a performance monitor having a plurality of counting elements (column 2, lines 4-7), the method comprising the steps of identifying the number of events to be counted by the performance monitor (column 3, lines 20-25 and column 4, lines 38-44); identifying the number of counting elements available to count incidents of the events (column 3, lines 26-31 and column 44-54), and assigning at least two of the counting elements to serially count incidences of at least one of the events (column 3, lines 56-63). Gover also discloses that the monitoring operation steps are controlled by a control element comprising a monitor mode control register and further that the counting elements each comprise a performance monitor counter (column 3, lines 6-17).

Gover also discloses determining a previous (i.e. historical) frequency of occurrence of incidences of the events to be counted (column 4, lines 7-17 and 35-40) and assigning the available counters to the events to be counted based upon the determined previous frequency (column 4, lines 40-44).

Gover also discloses carrying out the monitoring method in a system using a computer program, with corresponding instructions in a computer readable software medium (column 2, lines 11-15).

Gover also discloses that when the number of events to be counted is less than the number of counting elements available to count incidences of the events, distributing the number of available counting elements across the number of events to be counted to employ serial counting (column 2, lines 11-25 and column 4, lines 55-67).

As noted above, the invention of Gover teaches many of the features of the claimed invention and while the invention of Gover does teach that when the number of events to be counted is less than the number of counting elements available to count incidences of the events, distributing the number of available counting elements across the number of events to be counted to employ serial counting and while it would have been obvious to one having ordinary skill in the art to perform a conventional division operation in order to distribute the number of available counting events, Gover does not explicitly disclose such a division step.

Dharap teaches a data list transmutation and input mapping system including means for distributing a number of table entries across the number of available

entries by dividing the number of table entries by the number of available entries, in a first assigning step, assigning a number of table entries, said number equal to the integer resulting from said dividing step, to each of the number of available entries and, in a second assignment step, assigning any unassigned table entries to at least one of said available entries (0025-0026).

It would have been obvious to one having ordinary skill in the art to modify the invention of Gover to explicitly disclose a division step, as taught by Dharap, because Dharap suggests a method pertinent to the particular problem of distributing items that would have provided means for correctly, accurately, and evenly assigning the counters to events of Gover (0025-0026).

Response to Arguments

2. Applicant's arguments with respect to claims 1, 2, 4, 5, 8, 9, 11-14, 16 and 17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure:

U.S. Patent No. 5,768,152 to Battaline et al. teaches performance monitoring through a JTAG 1149.1 interface.

U.S. Patent No. 5,257,358 to Cohen teaches a method for counting the number of program instruction completed by a microprocessor.

5. If a copy of a provisional application listed on the bottom portion of the accompanying Notice of References Cited (PTO-892) form is not included with this Office action and the PTO-892 has been annotated to indicate that the copy was not readily available, it is because the copy could not be readily obtained when the Office action was mailed. Should applicant desire a copy of such a provisional application, applicant should promptly request the copy from the Office of Public Records (OPR) in accordance with 37 CFR 1.14(a)(1)(iv), paying the required fee

Art Unit: 2857


under 37 CFR 1.19(b)(1). If a copy is ordered from OPR, the shortened statutory period for reply to this Office action will not be reset under MPEP § 710.06 unless applicant can demonstrate a substantial delay by the Office in fulfilling the order for the copy of the provisional application. Where the applicant has been notified on the PTO-892 that a copy of the provisional application is not readily available, the provision of MPEP § 707.05(a) that a copy of the cited reference will be automatically furnished without charge does not apply.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. West whose telephone number is (703)308-1309. The examiner can normally be reached on Monday through Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (703)308-1677. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

jrw
September 16, 2004


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800